

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
ESTATE; OF SAMUEL L. LEWIS, }
VIRGIL L. PAYTON, ADMINISTRATOR }

For Appellant: Neil D. Heily, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
Israel Rogers, Junior Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of the Estate of Samuel L. Lewis, Virgil L. Payton, Administrator, to proposed assessments of interest and penalties in the amounts of \$92.04, 9163.85, \$397.85, \$36.24, \$171.20 and \$64.11 for the years 1950 through 1955, respectively.

Samuel L. Lewis died on January 11, 1957. Thereafter, the Franchise Tax Board issued notices of proposed assessments of additional personal income tax for the years in question, including interest on the tax and penalties for fraud, failure to file timely returns and failure to file returns on notice and demand. The penalties were imposed under Sections 18681, 18682 and 18685 of the Revenue and Taxation Code.

The primary question presented in this appeal is whether the penalties abated at the death of Samuel L. Lewis.

In Helvering v. Mitchell, 303 U. S. 391, the Supreme Court stated that federal additions to a tax for fraud were remedial in character and the sanctions were primarily safeguards for the protection of the revenue and to reimburse the government for the heavy expense of investigation and the loss resulting from a taxpayer's fraud. In reliance upon that case, it has been held that such additions made pursuant to Section 293(b) of the Internal Revenue Code of 1939 were not punitive in nature and therefore could be imposed after the taxpayer's death. (Kirk v. Commissioner, 179 Fed. 2d 619; Reimer's Estate v. Commissioner, 180 F. 2d 159.) Likewise, an addition made pursuant to Section 291 of the Internal Revenue Code of 1939 for a decedent's failure to file a timely return has been held applicable to his estate. (Lee v. Commissioner, 227 F. 2d 181, cert. denied, 351 U. S. 982.) --

These federal statutes were very similar to the ones that concern us except that the federal statutes did not refer to the sanctions as "penalties." The use in a statute of the label "penalty," however, does not in itself establish that the sanction thus described is intended as punishment for wrongdoing rather

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than as a remedy to protect the revenue and to reimburse the government for expenses resulting from the dereliction. (Long Beach City School District v. Payne, 219 Cal. 598, involving a "penalty" for delinquent payment of property tax; In re Haynes, 88 F. Supp. 379, holding that a "penalty" for failure to pay a tax was collectible from a bankrupt's estate.)

The California provisions themselves did not contain the word "penalty" until the Personal Income Tax Act was codified in 1945. As a general rule, the codification of an act is deemed not to result in substantive changes in the law (Sobey v. Molony, 40 Cal. App. 2d 381), and it was the specific intent of the California Code Commission to make no such changes in codifying this Act. (1943 Report of Calif. Code. Comm'n, p. 9.) It is significant to note in this connection that Section 6653(d) of the Internal Revenue Code of 1954 now describes the sanctions for fraud and failure to file returns as "penalties." Yet House Report No. 1337 and Senate Report No. 1662 indicate that the sanctions are no different from those in the 1939 Code. (1954 U. S. Code Cong. & Ad. News, pp. 4566, 4567, 5240.)

Appellant points to Section 19265 of the Revenue and Taxation Code, which provides that a fiduciary is personally liable if he distributes the assets of an estate before he pays "taxes, interest, and penalties, except penalties due from a decedent ...". Suffice it to say that this section does not provide that penalties abate at death. If the penalties to which it refers embrace the civil sanctions that concern us, then at most it has the effect of relieving the fiduciary from personal liability for them.

'It is clear to us that the fundamental nature of the civil sanctions in the California Law is the same as that of the sanctions in the Internal Revenue Code. We therefore conclude that the California sanctions, like the federal, do not abate at death.

Appellant also contends that the Franchise Tax Board incorrectly computed the interest due on the tax. However, the accuracy of the present interest computation is irrelevant since the interest will continue to accrue until the tax is paid and consequently the interest will be recomputed pursuant to Section 18688 of the Revenue and Taxation Code.

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O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of the Estate of Samuel L. Lewis, Virgil L. Payton, Administrator, to proposed assessments of interest and penalties in the amounts of \$92.04, \$163.85, \$397.85, \$36.24, \$1'71.20 and \$64.11 for the years 1950 through 1955, respectively, be sustained.

Done at Sacramento, California, this 6th day of April, 1961, by the State Board of Equalization.

John W. Lynch, Chairman

Geo. R. Reilly, Member

Alan Cranston, Member

Paul R. Leake, Member

Richard Nevins, Member

ATTEST: Dixwell L. Pierce, Secretary